IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5414 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAGANLAL NARSIBHAI DETROJA

Versus

STATE OF GUJARAT

Appearance:

MR BP GUPTA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 3, 4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/08/2000

ORAL JUDGEMENT

1. The petitioner abovenamed has preferred this petition under Articles 14, 19, 21, 22 and 226 of the Constitution of India challenging the order of detention of the petitioner dated 14.5.2000 passed by the third respondent directing the detention of the petitioner in Central Jail at Ahmedabad in view of the provisions made

in section 3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980.

2. The facts of the case may briefly be stated as follows :

That the third respondent conducted some inquiry and thereafter, came to the decision that the petitioner was required to be detained in accordance with the aforesaid provisions of law and, therefore, the said order was passed on 14.5.2000 detaining the petitioner in view of the section 3(2) of the said Act.

The petitioner has challenged the aforesaid order of detention on various grounds. However, at the time of arguments learned advocate for the petitioner has restricted his arguments to the point that the documents supplied by the respondent to the petitioner were not legible and, therefore, the petitioner was prevented from making effective representation against the aforesaid order of detention and, therefore, his statutory right of making effective representation has been taken away and the same is in violation of principles of natural justice. Therefore, the petitioner claims that the petitioner had a valuable right of making the representation against his detention and since, the petitioner was not in a position to avail of the statutory benefits, detention cannot be sustained and, therefore, the petitioner has prayed for appropriate writ, order or directions for quashing and setting aside the aforesaid order of detention dated. 14.5.2000.

On receiving the petition, rule was issued on 12.6.2000, respondents have been served and appearance has been made on behalf of the respondent. Mr. Patel, learned AGP appears for respondent nos. 1, 3 and 4. Ms. P.J.Davawala, learned Additional Sr. Standing Counsel appears for respondent no.2. I have heard Mr. Yatin Oza, learned Sr. Counsel with Mr B.P.Gupta, learned Advocate for the petitioner. Mr. Patel for respondent nos.1,3, and 4 and Ms. Davawala for respondent no.2. I have perused the papers shown to me during the course of arguments by the learned advocates for the parties. Since the arguments have been restricted to the point of non-supply of legible documents to the petitioner, the discussion and decision are also restricted on this short ground to dispose of the petition.

Learned advocate for the petitioner has contended that certain registers have been taken in to account and considered for the purpose of detaining the petitioner.

It has also been contended that some entries in the said register are clearly illegible and, therefore, the petitioner has been deprived of his valuable right of making effective representation and, therefore, the detention is illegal and not sustainable.

Mr. Patel learned AGP argues on behalf of contesting respondents states that it is not true that the documents are not legible and, therefore, the petitioner's right of making effective representation has not been taken away and, therefore, detention cannot be assailed on that ground. Now, if we consider the entries made in the register, it can be gathered that at page 137 the last entry shows permit number 344262 and bill date 5.5.2000. In the aforesaid entry, upper figure which is 344262 has been scored off and this entry is maintained by the office of Mamlatdar of Manavada Taluka. That for the said entry which has been scored off no entry has been substituted in place of the original one. It is therefore not clear as to what would be the meaning of this entry which has been scored off. Then the first entry at page 137 also indicates the permit number and date. The permit number shows over writing and after over writing, the figure is not clearly legible. Mr. Patel, learned APP states that these are not illegible entries as stated above. So far as the last entry is concerned it is scored off and it has no initial and at the same time no other figure has been substituted for the original entry. Therefore, it is not possible to understand if the aforesaid entry conveys anything. In that view of the matter, it can be said that this is not a meaningful entry. This entry and the document at page - 137 have been taken into account for passing the order of detention and for arriving at a decision. Therefore, this document is relevant and material and it has been considered for the purpose of arriving at aforesaid decision and the petitioner has been detained on the strength of the aforesaid document containing the aforesaid illegible entries and in that case it has to be considered that the petitioner has been deprived of his valuable right of making effective representation against his detention.

In this view of the matter I find a decision of this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgment reads as follows :

> Without addressing about legality of the grounds of detention, the learned advocate for the petitioner submitted that the petition is

> required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

It would be worthwhile to refer to another decision of the Hon'ble Supreme Court in the case of Madan Lal Anand Vs. Union of India reported in AIR 1990 SC 176. It has been clearly laid down in it that if a document has been relied upon for the purpose of detention and if the same is not legible then detention order cannot be sustained.

In this case it is found that the valuable right of the petitioner of making effective representation against his detention have been taken away by the respondents by not supplying the copies of the documents fully legible which has been considered and relied upon for the purpose of arriving at a decision of detaining the petitioner and for passing the order of detention of the petitioner under the abovesaid provisions of law. Therefore, when the petitioner's right of making effective representation has been taken away, the order of detention cannot be sustained and it requires to be quashed and set aside.

There is no reason to disagree with the aforesaid observations of this Court made in the said petition by the learned Single Judge of this Court. In the present case also it is found that some entries on some pages referred to above are not fully legible and, therefore, the petitioner was deprived of his valuable right of making effective representation against his detention. In that view of the matter the facts of the case in the aforesaid matter clearly cover the facts of the case before me also.

In the circumstances, when the petitioner has been deprived of his valuable right of making effective representation against his detention, the order of detention can not be sustained and it requires to be quashed and set aside.

For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed against the petitioner on 14.5.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(Vipul)